IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 643 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

GABHA @ MAMAD USMAN

Appearance:

MS.SIDDHI TALATI, APP.for Appellant.

MS KUSUM M SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 17/11/2000

ORAL JUDGEMENT

#. This appeal is filed by the State of Gujarat against the order of acquittal dated 08.04.1992 passed by the Chief Judicial Magistrate, Kutch-Bhuj in Criminal

Case No. 1593 of 1991 for the alleged offence under section 25(1B) (a) of the Arms Act,1959.

#. After hearing both the sides and taking into consideration the evidence on record, the Chief Judicial Magistrate has come to the conclusion that the prosecution has not been able to prove beyond reasonable doubt that the accused was in possession of a firearm (gun) in contravention of section 3 of the Arms Act,1959. For arriving at this conclusion, the statements of two panchas whose depositions are available at exhibits 7 and 10 have been appreciated and findings recorded that both the panchas have stated that the search was not carried out in their presence nor was any recovery of the firearm made in their presence but their signatures had been obtained on the panchnama which had already been drawn. Both the panchas have been declared as hostile witnesses and accordingly the prosecution has also cross-examined them; whereunder, they denied that they were explained the terms of warrant which was in English, nor was it correct that the warrant was explained to the accused and further that the countrymade gun was recovered on removal of wooden logs inside the house. Therefore, in effect the deposition of both the panch witnesses demolished the case of the prosecution absolutely and apart from the statement of P.S.I. Rambhai Bhurabhai Odedara who had carried out the search and seizure, there is no other independent corroborative evidence. It is in light of these facts and circumstances and the evidence on record that the Chief Judicial Magistrate has come to the conclusion that the prosecution has failed to prove its case.

#. Accordingly, as per final order in light of the provisions of section 248(1) of of the Code of Criminal Procedure read with section 25(1B)(a) of the Arms Act,1959, the accused has been set free in absence of any positive evidence resulting in the accused being granted benefit of doubt.

#.I have heard the learned Public Prosecutor Ms.Talati as well as learned Counsel for the accused respondent Ms.Shah in the present appeal and I find that there is no justifiable reason to interfere with the impugned order of acquittal passed by the lower court and the same is hereby confirmed. The appeal thus fails and is accordingly dismissed. The Registry to return all the relevant records and proceedings of this case.

(D.A.Mehta, J)

m.m.bhatt